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In The
Supreme Court of The United States

ALLIED SYSTEMS, LTD.,
Petitioner,

v.

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATION COMMITTEE, LOCAL UNION 327, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, DAVID HODGIN AND JIMMY NEAL, ITS OFFICERS, AGENTS AND EMPLOYEES AND ITS MEMBERS WHO ARE EMPLOYED BY PLAINTIFF, ALLIED SYSTEMS, LTD. AT ITS NASHVILLE, TENNESSEE FACILITIES.
Respondents.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Is an employer seeking to enjoin a work stoppage pursuant to the criteria established by this Court in Boys Markets v. Retail Clerks Union, 398 U.S. 235 (1970) required to establish that the dispute underlying the controversy is clearly and undisputably arbitrable under the terms of the collective bargaining agreement as a condition precedent to obtaining injunctive relief?

Is an employer seeking to enjoin a work stoppage pursuant to the criteria established by this Court in Boys Markets, supra, entitled to a presumption of arbitrability as initially defined by this Court in its United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) and thereafter approved in Gateway Coal Company v. United Mineworkers, 414 U.S. 368 (1974) and AT&T Technologies, Inc. v. Communication Workers of America, 475 U.S. 643 (1986) when establishing that the dispute underlying the controversy is subject to binding arbitration under the terms of the collective bargaining agreement?

Was it this Court's intention to create two distinct standards by which an employer must establish whether a controversy arising under a labor agreement is subject to binding arbitration: one, a presumption of arbitrability to determine

whether an arbitration clause should be specifically enforced; and two, clear and undisputable evidence that the controversy underlying a work stoppage is subject to binding arbitration when seeking a Boys Markets injunction, which, if not, underscores the conflict between the standards applied by the Third and Fifth Circuits as opposed to the standards created and applied by the Second and Sixth Circuits?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to this proceeding are Allied Systems, Ltd., the Petitioner, and Teamsters National Automobile Transporters Negotiating Committee, Local Union 327, an affiliate of the International Brotherhood of Teamsters; David Hodgin and Jimmy Neal, officers of Local Union 327, as well as other officers, agents and employees of Local 327 and its members employed by Allied at its Nashville, Tennessee facility, the Respondents.

The Petitioner, Allied Systems, Ltd. is a wholly owned subsidiary of Allied Automotive Group, Inc. Allied Automotive Group, Inc. is a wholly owned subsidiary of Allied Holdings, Inc.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Allied Systems, Ltd., respectfully prays that a Writ of Certiorari issue to review a final judgment and order of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The decision of the Court of Appeals for the Sixth Circuit was filed on June 9, 1999 and was recommended for full text publication pursuant to Sixth Circuit Rule 206. (Appendix A). The trial court's unpublished order denying Plaintiff's Motion for Preliminary Injunction was filed on June 11, 1998. (Appendix B). The trial court's transcript of the bench ruling of Judge Todd J. Campbell on Plaintiff's Motion for Preliminary Injunction was filed on June 12, 1998. (Appendix C).

JURISDICTIONAL STATEMENT

Petitioner, Allied Systems, Ltd., seeks review of the June 9, 1999 Order of the United States Court of Appeals for the Sixth Circuit. This Order affirmed the District Court's June 11, 1998 denial of Petitioner's request for injunctive relief brought pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. 185, and this Court's decision in Boys Markets, supra.

The complaint was brought to enjoin a work stoppage involving a labor agreement containing a no-strike clause provision, a mandatory grievance and arbitration procedure and a broad arbitration clause. The Court of Appeals has decided an important issue of federal labor law by requiring that the Petitioner establish that the controversy over which the work stoppage occurred was clearly and undisputably subject to binding arbitration, and, therefore, arbitrable under the arbitration clause. The standard utilized by the Sixth Circuit is in conflict with other Courts of Appeal decisions, notably those of the Third and Fifth Circuits involving this same important issue of federal labor law in which these courts adopted a presumption of arbitrability as the appropriate test. This conflict has not been, but should be reviewed and settled by this Court.

Moreover, the Court of Appeals for the Sixth Circuit June 9, 1999 decision requiring the Petitioner to establish clearly and undisputably that the controversy over which the work stoppage was subject to binding arbitration is contrary to the presumption of arbitrability consistently enunciated by this Court as applicable in similar circumstances. United Steelworkers of America v. Warrior & Gulf Navigation, 363 U.S. 574 (1960); Gateway Coal Company v. United Mine Workers, 414 U.S. 368 (1974); and AT&T Technologies, Inc. v. Communication Workers, 475 U.S. 643 (1986).

Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. 1254 (1). (Appendix D)

STATUTORY PROVISIONS

The present case involves the interpretation of the relationship of the Labor Management Relations Act, Section 301, 29 U.S.C. 185 as it relates to the Norris-LaGuardia Anti-Injunction Act, 29 U.S.C. 101, et seq. The full text of both of these statutory provisions are set forth in the Appendix (Appendices E - P).

STATEMENT OF THE CASE

A. The Parties to this Appeal

Petitioner, Allied Systems, Ltd.'s ("Allied" or "Petitioner") principal office is located in Decatur, Georgia. It operates over one hundred (100) terminal facilities throughout the continental United States including one (1) in Nashville, Tennessee.

Respondent Teamsters National Automobile Transporters Industry Negotiating Committee ("TNATINC") is a labor organization affiliated with the International Brotherhood of Teamsters ("IBT"). It is authorized by numerous local unions affiliated with the IBT, including Respondent Local Union 327 ("Local 327"), to negotiate on their behalf the terms and conditions of an industry-wide agreement entitled the, "National Master Automobile Transporters Agreement" ("National Agreement") and its various Supplements. Local 327 is a labor organization

affiliated with the IBT. It represents the employees of Allied domiciled at its Nashville location. Respondents David Hodgin and Jimmy Neal are Local 327's President and Business Agent, respectively.

B. Relevant Provisions of the National Agreement

The National Agreement contains a no-strike clause and a comprehensive grievance and arbitration procedure to which disputes arising under the contract are to be submitted.

More specifically, Article 7, Section 1 of the National Agreement provides that all grievances and questions of interpretation arising from the Agreement shall be submitted to the grievance procedure for determination. They agree that there shall be no strike on the part of the employees or that the Employer use a lockout without first using all possible means of a settlement, provided for in the Agreement of any controversy which might arise.

Disputes that are not settled shall be referred to the appropriate Joint Committee, except for certain undisputable direct violations, including *inter alia* that specified in Article 7, Section 1(a) the nonpayment of the established wage rates, when due, provided for in the Agreement, Supplements or Rider. The parties further agree that this exception does not apply to disputes over the computation of wages or the application of wage rates.

The Local Union is to give a seventy-two (72) hour written notice prior to taking any strike action authorized by

this Section and is to specify the reason or reasons for the strike.

Article 7, Section 7(a) provides *inter alia* that it was the function of the National Committee to settle all disputes involving the interpretations of, or disputes over, the provisions of the National Agreement as well as disputes and interpretations concerning alleged conflicts in provisions of the National Agreement on the one hand and Area Supplements and Riders on the other hand.

Article 7, Section 8 provides that all matters pertaining to the interpretation of any provision of this National Agreement must be submitted to the National Committee for decision.

Article 7, Sections 8(a) and (e) provide that decisions of the majority of any Joint Committee shall be final and binding on the Employer, Local Union and the employees affected.

Article 7, Section 13 of the National Agreement establishes the scope of the grievance procedure and states as follows:

> "Unless otherwise expressly provided in this Agreement, any and all disputes, including interpretations of contract provisions arising under, out of, in connection with, or in relation to this collective bargaining agreement, shall be subject to the grievance

procedure of this Agreement."

C. Summary of Relevant Facts

On or about October 1, 1997, Allied Holdings, Inc. ("Holdings") purchased Ryder Automobile Carrier Group ("RACG") and its subsidiary corporations including Commercial Carriers, Inc. ("CCI"). Following the acquisition, the seventy-nine (79) terminals of RACG's subsidiaries were assumed by Allied Automotive Group Inc. ("AAG"), Allied's parent organization, a wholly owned subsidiary of Holdings. RACG's seventy-nine (79) terminals were added to the twenty-six (26) terminals previously operated by Allied.

As a result of this acquisition, Allied was confronted with operating dual terminals at seventeen (17) locations throughout the United States in which both Allied and one of the RACG operating subsidiaries, including CCI, operated terminals in the same general location.

As a matter of due diligence, both before, during and after the acquisition, Allied management explored means to consolidate some, if not all, of these commonly operated locations including Nashville, Tennessee.

Beginning in November 1997 Allied announced its intent to merge terminals at some or all of the locations at which it did operate two (2) or more facilities.

During the course of its due diligence, Allied management concluded that prior industry arbitration

decisions established that when two (2) terminals were merged, the conditions that applied at the terminal into which the operations were physically merged were the conditions that continued and applied at the surviving terminal. These conditions included local pay rates, dispatch procedures, payroll periods and other contrasting conditions unique to the terminals in question. The prior arbitration decisions supporting this position were accumulated and disseminated to the various Teamster local unions when merger announcements were made.

In December 1997, Allied announced to Jimmy Neal, Business Representative of Local 327, that it intended to merge the two (2) Nashville, Tennessee facilities and stated that the merger would take place in early 1998.

In February 1998, Allied and Local 327 submitted to the National Joint Standing Seniority Committee ("NJSSC"), an arbitration panel authorized to resolve only seniority disputes arising under Article 5, Sections 4, 5, 7 or 8 of the National Agreement, a request to determine the manner in which the seniority issues triggered by the merger should be resolved. This request was docketed with the NJSSC as Case No. 2-98-171. The NJSSC issued a decision in which it determined that Article 5, Section 4(a) of the contract applied and, therefore, the two (2) terminal seniority lists would be merged in accordance with the employee's respective terminal seniority dates. Allied requested a resolution of the

issue of which of the two (2) terminal's conditions would apply after the merger, but the NJSSC concluded that given its limited jurisdiction, it could not resolve that question.

Thereafter, Allied discussed the pending merger on a number of occasions with Local 327. Each time it reiterated that Allied intended to apply the conditions of the 743 Harding Place terminal after the merger was consummated. These discussions occurred in January, February, March and April, 1998 in advance of the merger. Local 327 did not protest this application on any of these occasions. The merger of Allied's Nashville terminals was delayed for administrative reasons.

Meanwhile, Allied merged its terminals at Memphis, Tennessee; Selkirk, NY; Kansas City, Kansas; Dallas, Texas; Houston, Texas; Tampa, Florida and Jacksonville, Florida, each of which was covered by the National Agreement. When merging, Allied applied the local conditions which prevailed at the successor terminal into which the employees were being merged.

Grievances were filed at Selkirk, New York; Memphis, Tennessee; Tampa, Florida and were filed at Jacksonville, Florida and Houston, Texas after the merger. In each instance, the local union protested Petitioner's policy of applying the local conditions which were previously in existence at the successor terminal into which the merger was consummated.

Allied's two (2) Nashville terminals were merged May 10, 1998. After the merger, the Veritas Street and Harding Place terminal seniority lists were dovetailed and a single Harding Place list was published; the equipment from both terminals was consolidated and reassigned to the Harding Place terminal; the Harding Place payroll period was utilized; terminal operations including terminal administrative staff and the maintenance facility, were placed at the Harding Place terminal; all traffic available both at Harding Place and Veritas Street was dispatched at the Harding Place terminal to the drivers on the merged terminal seniority list; and the Harding Place local pay rates were used exclusively when compensating the drivers, where applicable.

Prior to the merger, Allied continued to pay the Veritas Street local rates consistent with CCI's prior obligations. After the merger, Allied commenced to pay the Harding Place rates exclusively to the combined group of employees. These rates provided a comprehensive pay schedule so that all trips assigned all employees after the merger could be paid in accordance with the Harding Place rates. There were no gaps in the application that would otherwise prohibit this policy.

The Harding Place local pay rates are admittedly dissimilar to those of the Veritas terminal. Drivers compensated pursuant to Harding Place local rates were paid at higher rates in some instances and at lower rates in others.

The net effect, while not clearly identified, suggests that more often than not, the Harding Place rate would compensate the former Veritas Street employees at a higher rate than they would have experienced at the former location.

On May 20, 1998, Allied was advised that Local 327 had been authorized by TNATINC to engage in a work stoppage at Nashville, Tennessee to protest the exclusive payment of the Harding Place rates. In response, it submitted a letter to TNATINC on May 22, 1998 protesting the threatened work stoppage, contending that any strike over application of the Harding Place rates would violate the no-strike clause in the National Agreement and that it was prepared to arbitrate this dispute pursuant to the grievance procedure contained in Article 7 of the National Agreement.

Nonetheless, on May 29, 1998, Local 327 issued Allied a written seventy-two (72) hour strike notice. This written notice asserted that the Company was violating Article 1, Section 3 which provided in part as follows:

> "The Employer's obligations under this Agreement, * * * shall be binding upon its successors, administrators, executors and assigns. * * * ".

Moreover, Local 327 cited the Article 7, Section 1(a) exception to the no-strike clause.

In response to this strike notice, Allied protested contending the threatened work stoppage violated the no-

strike provisions of Article 7, Section 1. Allied asserted that the exclusive application of Harding Place pay rates was a controversy subject to resolution by the parties' grievance procedure. It also requested that the IBT and TNATINC take immediate action to prevent the threatened work stoppage, or if one occurred, to take action to terminate it.

On June 4, 1998, a work stoppage did ensue at Allied's Nashville Harding Place terminal. Local 327 contended that the dispute leading to the strike was Allied's application of the Harding Place local pay rates to all employees for all work, including vehicles located at the Veritas Street terminal.

Allied filed a Complaint seeking injunctive relief. At a June 4, 1998 hearing the Honorable Todd Campbell, U.S. District Court Judge, Middle District of Tennessee, issued a Temporary Restraining Order, including an Order to Show Cause why a preliminary injunction should not be issued.

On June 11, 1998, the District Court denied Allied's Motion for Preliminary Injunction for reasons set forth in the Memorandum of Opinion (Appendix C), and, thereafter, issued an Order denying Allied's Motion for Preliminary Injunction on June 12, 1998 (Appendix B).

A Notice of Appeal from this Order was filed by Allied on Friday, June 19, 1998 with the United States Court of Appeals for the Sixth Circuit.

On June 9, 1999, the Sixth Circuit issued an Opinion

affirming the lower court's denial of Allied's Motion for Preliminary Injunction. (Appendix A)

REASONS FOR GRANTING THE WRIT

I. The Petition should be granted because the Sixth Circuit Opinion below conflicts with other Circuit's rulings concerning the standard by which a party seeking a Boys Markets injunction must establish the arbitrability of the controversy over which the work stoppage has ensued.

The Court of Appeals for the Sixth Circuit affirmed the lower court's denial of Petitioner's request for a preliminary injunction brought pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. §185 and this Court's Boys Markets decision. It found that to support a request for injunctive relief the Petitioner must establish by clear and undisputable evidence that the controversy over which the work stoppage occurred was arbitrable under the collective bargaining agreement. This application is in conflict with other Circuits including the Third and Fifth Circuit, which have applied the presumption of arbitrability when determining whether a controversy over which the work stoppage occurred was subject to arbitration to satisfy the relevant Boys Markets criterion.

The Sixth Circuit in the instant case, as it did in Waller Brothers Stone Company v. United Steelworkers, 620

F. 2d 132 (6th Cir. 1980), found that it was incumbent upon the employer to establish that the controversy over which the work stoppage for which the Boys Markets injunction was sought was "clearly and undisputably" subject to binding arbitration under the terms of the parties' agreement and thus in violation of the no-strike clause. The Sixth Circuit relied, in part, upon the Court of Appeals for the Second Circuit decision in Standard Food Products Corporation v. Brandenberg, 436 F. 2d 964 (2nd Cir. 1970) in which the Second Circuit found that in the event the union submits a "colorable claim" that the alleged violation of the contract is not arbitrable, a Boys Markets injunction may not be issued.

Before reaching its decision in the instant matter, the Sixth Circuit identified the issue to be resolved as whether the dispute underlying the controversy over which the work stoppage occurred was subject to binding arbitration under the terms of the parties' collective bargaining agreement (Appendix A at Apx. 13-14). It recognized that the Petitioner was correct in contending that congressional policy has long favored the arbitration of labor disputes (Appendix A, Apx. 15). Moreover, the Sixth Circuit identified the underlying dispute in the instant matter as "whether Allied's decision to use the Harding facility wage rates constituted nonpayment of the Veritas rate or was an exercise in the application of wage rates" (Appendix A at Apx. 17).

The Sixth Circuit found that:

> "* * * reasonable minds may differ as to whether Allied's decision to use the Harding facility wage rates constituted (as the union asserts) the nonpayment of the Veritas facility established wage rates or (as Allied asserts) the application of wage rates. Both the union's and Allied's interpretation of the National Agreement have merit." (Appendix A at Apx. 19).

The Sixth Circuit found that there was an ambiguity in the collective bargaining agreement involved in the instant matter because it provided both that the no-strike clause did not apply to nonpayment of established wage rates, but concurrently provided that the no-strike clause applied to a dispute over the application or computation of wage rates. Given this ambiguity, it found that it was divested of authority to issue a Boys Markets injunction given the Norris-LaGuardia Act's anti-injunction provisions.

Consistent with its finding in Waller Brothers Stone Company, supra, the Sixth Circuit held that Petitioner had not demonstrated that its interpretation of the National Agreement was so "clearly and undisputably" correct to warrant issuance of the Boys Markets injunction.

The standard enunciated by the Sixth Circuit clearly conflicts with the standard utilized by the Courts of Appeals for the Third and Fifth Circuits in Avco Corporation v.

International Union, United Auto Workers, 459 F. 2d 968 (3rd Cir. 1972), and in Southwestern Bell Telephone Company v. Communication Workers of America, 454 F. 2d 1333 (5th Cir. 1971), *per curiam* (5th Cir. 1972) (modified on denial of rehearing and rehearing en banc), respectively.

In Avco Corporation, supra, the Third Circuit found that the presumption of arbitrability, initially enunciated by this Court in United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960), was applicable in the context of a Boys Markets injunction request when determining whether the issue over which the work stoppage to be enjoined was arbitrable under the parties' agreement. This is demonstrated by the Third Circuit's statement in Avco Corporation, supra, citing Warrior & Gulf Navigation, supra,:

> "In the absence of any express provision excluding the particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail particularly where * * * the arbitration clause [is] quite broad. 363 U.S. at 584 - 585. (459 F.2d. 968 at 973)

A similar criteria was used by the Fifth Circuit in Southwestern Bell v. C.W.A., supra, in which it found that whether it confronted a request to specifically enforce an arbitration clause or a request for a Boys Markets injunction, the same arbitrability test applies. In both situations it

confines its examination to finding whether the party seeking arbitration is making a claim which was "arguably arbitrable" on its face. (454 F.2d. 1333 at 1336) If so, the Fifth Circuit would order the parties to arbitrate the issue in question or issue a Boys Markets injunction pending arbitration of the issue.

Petitioner contends that the Third and Fifth Circuits would have sustained Petitioner's request for the issuance of a Boys Markets injunction and ordered the parties to arbitrate the Harding Place wage dispute over which the work stoppage occurred. This is because it could not be said with positive assurance that the broad arbitration clause of the National Agreement was not susceptible of an interpretation that covered the asserted Harding Place wage dispute. Any doubts would be resolved in favor of coverage by the Third and Fifth Circuits.

The conflict between the standards created and applied by the Second and Sixth Circuits and the standard applied by the Third and Fifth Circuits is irreconcilable without this Court's intervention.[1] Therefore, grant of certiorari in this

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1 An ALR Federal annotation published in 1984 (66 ALR Fed. 11, et seq) set forth a comprehensive examination of the judicial developments relating to the exceptions to the anti-injunction labor law apparently triggered by the then recent issuance of the Sixth Circuit's Waller Brothers Stone Company decision supra, (66 ALR Fed. 1-10) which precedes

matter is fully justified.

II. The Petition should be granted because the Sixth Circuit opinion below conflicts with this Court's prior rulings establishing that a presumption of arbitrability applies when determining whether an issue over which a labor controversy has occurred is arbitrable once a labor agreement containing arbitration and no-strike clauses is established.

Petitioner further contends that its Petition for Certiorari should be granted because the Sixth Circuit's decision in this case is contrary to this Court's decisions in the Steelworkers Trilogy.[2] Gateway Coal Co. v. United Mineworkers, 414 U.S. 368 (1974), and AT&T Technologies, Inc. v. Communication Workers of America, 475 U.S. 643 (1986).

In each of these decisions, this Court established that a presumption of arbitrability applies in actions brought

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the annotation. The conflict among the Circuits concerning the application of and propriety of a presumption of arbitrability in a Boys Markets setting is discussed. 66 ALR Fed. 36-38

2 Warrior & Gulf Navigation, supra; United Steelworkers of America v. Enterprise Wheel Car Corporation, 363 U.S. 593 (1960); United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564 (1960).

pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. 185, when determining whether an issue is arbitrable in the context of a controversy arising under a labor agreement. These decisions collectively and individually establish that a lower court confronting a request either to issue a Boys Markets injunction or to enforce an arbitration clause is to presume the controversy over which either request is made is arbitrable in the absence of explicit and forceful evidence to the contrary.

Commencing with the Steelworkers Trilogy, specifically in Warrior & Gulf Navigation, supra, this Court admonished the lower courts that once a labor agreement containing a broad arbitration clause providing for submission of disputes to arbitration is established, a presumption of arbitrability applies. This Court stated in Warrior & Gulf Navigation, supra,

> "* * * To be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under § 301 must be strictly confined to the question of whether the reluctant party did agree to arbitrate the grievance or did agree to give the arbitrator power to make the award he made. An order to arbitrate the particular grievance should not be denied unless it may be said with positive

> assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." 363 U.S. 574 at 582-583.

Subsequent to the Steelworkers Trilogy, this Court again supported the congressional policy favoring the peaceful resolution of labor contract disputes by arbitration when deciding Boys Markets, supra, and, thereby established an exception to the Norris LaGuardia Anti-Injunction Act. Petitioner acknowledges Boys Markets injunctive relief can only be granted *inter alia*, when the controversy over which the work stoppage sought to be enjoined involves a labor dispute as defined by the Norris LaGuardia Act and that the controversy leading to the work stoppage is subject to binding arbitration under the terms of the collective bargaining agreement. Moreover, Petitioner is fully cognizant that the Boys Markets decision was a "narrow" one and limited to the precise circumstances outlined in that decision. Yet, in the instant case, the Sixth Circuit acknowledges the only disputed issue concerning whether a Boys Markets injunction is justified is whether the controversy leading to the work stoppage is arbitrable. Thus, Petitioner is entitled to a presumption of arbitrability, consistent with this Court's Warrior & Gulf Navigation, Gateway Coal, and AT&T Technologies decisions. Otherwise, the policy considerations

underlying Boys Markets are substantially emasculated.

If Petitioner is entitled to a presumption of arbitrability in the instant case, the Sixth Circuit erred by imposing upon it a contradictory burden to concurrently establish that the issue presumed to be arbitrable is also "clearly and undisputably" subject to binding arbitration pursuant to the parties' agreement. This commingling of a presumption of arbitrability with an obligation to establish that the same issue is clearly and undisputably subject to arbitration is hopelessly at odds. It can only be corrected by this Court.

Whether the presumption of arbitrability was applicable to a trial court's analysis of a Boys Markets injunction request was an issue acknowledged by many shortly after the issuance of the Boys Markets decision. In a 1971 Harvard Law Review article, it was noted that Boys Markets did not settle the question of whether the presumption of arbitrability should be applied by courts when determining whether a grievance is "arbitrable" for the purpose of issuing a Boys Markets injunction. (85 Harv. L. Rev. 636 at 639). While the commentators recognized that it was arguable that stricter scrutiny of arbitrability might be appropriate, they criticized the Second Circuit's "colorable claim" standard enunciated in Standard Food Products Co., supra, in which the Court had rejected a presumption of arbitrability as a relevant standard in issuing Boys Markets

injunctions. The commentary noted that if courts were to apply the 'colorable claim' theory to interpretation of exclusions from the arbitration clause, it would be tantamount to establishing a presumption of non-arbitrability. The commentators opined that the burden to overcome a union's "colorable claim" was, therefore, excessive in light of the strong congressional policy favoring the use of arbitration to promote industrial peace. (85 Harv. L. Rev. at 643) In the instant case, the Sixth Circuit has in effect likewise created a presumption of non-arbitrability which an employer must overcome to obtain a Boys Markets injunction.

In 1974 and 1986, this Court issued its Gateway Coal, supra, and AT&T Technologies, supra, decisions respectively. Petitioner believes that in both, this Court reiterated that a presumption of arbitrability is the appropriate test in determining whether a labor dispute is arbitrable in the context of either a Boys Markets injunction request, as in Gateway Coal, supra, or a determination of substantive arbitrability, as in AT&T Technologies, supra.

In Gateway Coal, supra, this Court found that arbitration was equally applicable to labor disputes touching the safety of employees as to other varieties of disagreements. Particularly relevant to the instant case it found that the presumption of arbitrability enunciated in Warrior & Gulf, supra, applied to safety disputes and that the dispute involved was covered by the arbitration clause in the parties' collective

bargaining agreement. It found, moreover that absent an explicit expression of the parties' intention not to apply the broad mandatory arbitration clause, the agreement to arbitrate and the duty not to strike were to be construed as having coterminous application. (414 U.S. 368 at 382).

Petitioner contends that in Gateway Coal, this Court established that a presumption of arbitrability is the test to be utilized by a trial court when determining the arbitrability of a controversy leading to a work stoppage in the context of a request for injunctive relief pursuant to the Boys Markets criteria. Thus, the Sixth Circuit's imposition of a conflicting standard by which Petitioner had to establish by clear and undisputable evidence that the controversy over which the work stoppage sought to be enjoined was subject to binding arbitration is inconsistent with this Court's Gateway Coal decision.

Furthermore, the Petitioner further contends that the presumption of arbitrability was further extended by this Court when it issued its decision in AT&T Technologies, Inc., supra. Therein, this Court found that a question of whether a collective bargaining agreement creates a duty to arbitrate is an issue for determination first by the court and not by the arbitrator unless the parties clearly and unmistakably provide to the contrary. But in doing do, the Court reiterated that a presumption of arbitrability is applicable to determining the question of arbitrability. Citing Warrior & Gulf, supra, it

reiterated that an order to arbitrate should not be denied unless the lower court finds with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute and that any doubts should be resolved in favor of arbitrability. (475 U.S. 643 at 650). Moreover, it cited Gateway Coal as further support of the presumption of arbitrability as the test for determining arbitrability. In remanding the issue to the district court it concluded:

> "The issue in the case is whether, because of expressed exclusion or other forceful evidence, the dispute over the interpretation of Article 20 of the contract, the layoff provision, is not subject to the arbitration clause. * * *"
> (475 U.S. 643 at 652).

Effectively ignoring the above authorities, and their consistent and uniform affirmation of the presumption of arbitrability, the Sixth Circuit sought to rely upon this Court's decision in Buffalo Forge Co. v. United Steelworkers of America, 428 U.S. 397 (1976). This reliance is misplaced. In Buffalo Forge Co., supra, this Court was confronted with the Second Circuit's affirmance of the district court's denial of the employer's request for a preliminary injunction sought pursuant to the Boys Markets criteria. The employer's office and technical employees had struck and picketed in the midst of a contract dispute. The same employer's production and maintenance employees, who were encompassed by a

separate labor agreement, honored the office and technical workers picket line in sympathy pursuant to their union's request. The employer sought to enjoin the union from authorizing and directing the production and maintenance employees to honor the other employee's picket line. The employer's labor agreement with the production and maintenance employees contained a no-strike and broad arbitration clauses.

This Court found its Boys Markets decision plainly did not control in the Buffalo Forge circumstances. It found the sympathy strike was an issue not remotely subject to the arbitration provisions of the parties' labor contract. It found that neither the office workers strike or causes nor the issues underlying their strike were subject to the settlement procedures of the contract between the employer and its production and maintenance employees. (428 U.S. 397 at 407, 408) This Court further found that the alleged violation of the no-strike clause did not in itself warrant an injunction given the anti-injunction restrictions in the Norris LaGuardia Act (428 U.S. 397 at 409).

It is clear in the instant matter, however, that the work stoppage was not a sympathy strike but was caused by a dispute over which of the two established wage rates were to be paid at the Harding Place terminal. It involves only the parties to the collective bargaining agreement directly involved in the injunction proceeding. An arbitrator could

have resolved the wage dispute which is the kind of dispute contemplated by the parties' broad arbitration clause. The wage dispute, was and is directly subject to the arbitration provisions of the agreement, and is therefore, clearly distinguishable from the facts inherent in Buffalo Forge.

Moreover, the Petitioner did not seek an injunction pending arbitration of an alleged violation of the no-strike clause. Rather, the Petitioner sought to enjoin the strike pending arbitration of the controversy leading to the work stoppage: whether it was entitled to pay the Harding Place rate after the merger of the two Nashville terminals. In the instant case, the violation of the no-strike clause was not the issue to be arbitrated, which was a major premise of this Court's Buffalo Forge decision. Therefore, Buffalo Forge, supra, is manifestly distinguishable and should not be viewed as controlling authority in determining the matter at issue.

Moreover, the Sixth Circuit's reliance on Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Association, 457 U.S. 702 (1982) to support its "clear and undisputed" standard is equally misplaced. In Jacksonville Bulk Terminals, Inc., supra, this Court confronted the Fifth Circuit's reversal of the district court's issuance of an order enjoining a work stoppage alleged to violate a no-strike clause. Following President Carter's decision to restrict trade with the Soviet Union due to its intervention in Afghanistan, the International Longshoremen's Association ("ILA"),

announced that its members would not handle cargo inbound or outbound to the Soviet Union or carried on its ships. In response, members of an ILA affiliate refused to load chemicals, not included in the President's embargo, bound for the Soviet Union. The shipping terminal operator, the manufacturers of the chemicals, and the parent corporation of both filed an action pursuant to Section 301 of the LMRA, 29 U.S.C. 185, seeking to enjoin the work stoppage which they alleged violated the labor agreement between the terminal operator and the ILA affiliate.

This Court initially found that the work stoppage protesting the Soviet Union related shipments, even though politically motivated, was nonetheless a labor dispute within the meaning of the Norris LaGuardia Anti-Injunction Act. In addition, it found that its Buffalo Forge decision was applicable and, therefore, sustained the Fifth Circuit's vacating the labor injunction. In doing so, it found that the labor dispute involved in Jacksonville Bulk Terminals, like the sympathy strike dispute in Buffalo Forge, was not remotely related to the arbitration clause in the parties' labor agreement. It found that the underlying dispute, whether viewed as an expression of the Union's 'moral outrage' at Soviet military policy or as an expression of sympathy for the people of Afghanistan was plainly not arbitrable under the collective bargaining agreement. (457 U.S. 702 at 721). Since the controversy over which the work stoppage was

"plainly not arbitrable" it could not be enjoined, a finding consistent with the narrow parameters of the Boys Markets criteria and, thus, it fell within the limitations of the Norris LaGuardia Act.

The Sixth Circuit's adoption of the Jacksonville Bulk Terminals "plainly not arbitrable" language to support its finding that the Petitioner was obligated to establish that the controversy leading to the work stoppage was "clearly and undisputably" subject to binding arbitration is a non sequitur. Simply put, to find an issue is 'plainly not arbitrable' is the opposite from an obligation to find that the same issue is "clearly and undisputably arbitrable". For this reason, the Sixth Circuit's reliance upon Jacksonville Bulk Terminals is without foundation.

Petitioner therefore suggests that this Court's affirmation of the presumption of arbitrability in Gateway Coal and AT&T Technologies clearly prevails in the instant matter. Thus, it prays that the Court grant certiorari to further affirm its role in the resolution of arbitrability disputes in Boys Markets applications.

CONCLUSION

In the twenty-nine years since this Court decided Boys Markets, the lower courts have differed in determining the tests by which the party seeking an injunction must establish the arbitrability of the controversy over which the work stoppage has occurred. As a result, a conflict has developed

among the Courts of Appeals which cannot help but frustrate parties in seeking injunctive relief under the criteria set forth in Boys Markets, supra. The instant case illustrates this conflict because the Sixth Circuit has found that a party seeking injunctive relief pursuant to Boys Markets must establish by clear and undisputed evidence that the controversy over which the work stoppage sought to be enjoined is subject to binding arbitration. While this test is comparable to the Second Circuit's "colorable claim" standard, it conflicts with the Third and Fifth Circuits' adoption of a presumption of arbitrability, consistent with this Court's earlier decisions in Warrior & Gulf, Gateway Coal and AT&T Technologies. This conflict has produced confusion among the parties seeking to comply with this Court's Boys Markets criteria and has led to different results depending on the Circuit in which the action is brought. Adherence to the policy considerations inherent in Boys Markets should not vary because of the residence of the parties seeking relief.

Moreover, the Sixth Circuit's failure in the instant case to acknowledge the presumption of arbitrability so carefully enunciated by this Court in its Steel Trilogy, Gateway Coal and AT&T Technologies decisions, effectively emasculates the principles and policies leading to the Boys Markets decision as well as the congressional policy favoring arbitration upon which that decision was well founded.

Whether the Sixth Circuit decision is viewed as in conflict with the aforementioned decisions or as evidence of an element of significant federal labor law which is not yet resolved, it is an issue which requires resolution by this Court at this time.

Petitioner Allied prays that certiorari be granted to permit this Court to resolve the manifest conflict within the Circuits and to establish that a presumption of arbitrability is the appropriate test to determine the requisite arbitrability of the controversy leading to the work stoppage when seeking injunctive relief pursuant to Boys Markets, supra .

Respectfully submitted:

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Appendix A

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

ELECTRONIC CITATION:
1999 FED App. 0208P (6th Cir.)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ALLIED SYSTEMS LTD., a Georgia Limited Partnership,
Plaintiff-Appellant,

v.

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, LOCAL UNION 327, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Dave Hodgin and Jimmy Neal, its officers, agents and employees and its members who are employed by Plaintiff Allied Systems, Ltd. at its Nashville, Tennessee facilities,
Defendants-Appellees.

No. 98-5862

6th Circuit
Court of Appeals
Filed 6/9/99
Leonard Green, Clerk

Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.
No. 98-00499—Todd J. Campbell, District Judge.

Argued: March 10, 1999

Decided and Filed: June 9, 1999

Before: JONES, SUHRHEINRICH, and MOORE, Circuit Judges.

COUNSEL

ARGUED: R. Ian Hunter, DEAN & FULKERSON, Troy, Michigan, for Appellant. Michael J. Passino, LASSITER, TIDWELL & HILDEBRAND, Nashville, Tennessee, for Appellees. **ON BRIEF:** R. Ian Hunter, Roberto L. Mercado, DEAN & FULKERSON, Troy, Michigan, for Appellant. Michael J. Passino, LASSITER, TIDWELL & HILDEBRAND, Nashville, Tennessee, Michael Hamilton, PROVOST*UMPHREY, Nashville, Tennessee, for Appellees.

OPINION

NATHANIEL R. JONES, Circuit Judge. Plaintiff-Appellant Allied Systems, Ltd. ("Allied") appeals the district court's denial of a preliminary injunction preventing defendants-appellees Teamsters National Automobile Transporters Industry Negotiating Committee, Local 327 (the "union")[3] from engaging in a strike at Allied's terminal facility. Because we agree that the district court's denial of the injunction was proper, we affirm.

I.

The facts underlying this appeal are not in dispute. Allied is in the business of transporting automobiles in the United States and Canada from various rail, plant, and port locations to dealerships. It operates over 100 shipping facilities throughout the country, including one at 743 Harding Street in Nashville, Tennessee ("Harding Facility").

---

[3]The workers comprising Local 327 delegated their bargaining authority to appellee Teamsters National Automobile Transporters Industry Negotiating Committee, which is a union negotiating committee established pursuant to the International Brotherhood of Teamsters' Constitution. For simplicity's sake, we will refer to both collectively as the "union."

Allied also recognizes and has a collective bargaining relationship with the union, which, in turn, represents the workers at Allied's facilities.

For each Allied shipping terminal location, including the Harding Facility, labor relations were governed by a multi-employer, multi-local union collective bargaining agreement known as the National Master Automobile Transporters Agreement ("National Agreement"). Among many other things, the National Agreement contains an "established wage rate" for each facility, which was negotiated at both the national and local levels and approved by the union. Once negotiated and approved, the established wage rate remains effective for the term of the National Agreement. In addition, the National Agreement contains several provisions to the effect that any disputes over the interpretation of the National Agreement are to be submitted to an arbitrator. For example, Article 7, Section 7(a) of the National Agreement provides:

> It shall be the function of the National Joint Arbitration Committee to settle disputes and grievances which arise under the following circumstances:

(1) Involving interpretations of, or disputes over, the provisions of the [National Agreement].

. . .

(4) Disputes and interpretations concerning alleged conflicts in provisions of the [National Agreement] on the one hand and Area Supplements and Riders thereto on the other hand.

J.A. at 144-45.

Pertinent to this appeal, the National Agreement contains a no-strike provision and a comprehensive grievance and arbitration procedure to which disputes arising under the National Agreement are to be submitted. Specifically, Article 7, Section 1 of the National Agreement provides in relevant portions as follows:

> The parties agree that all grievances and questions of interpretation arising from the provisions of this Agreement shall be submitted to the grievance procedure for determination.

> The Unions and Employers agree that there shall be no strike . . . without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise.

J.A. at 139. However, there is an "exception" to the no-strike clause, which reads in relevant part as follows:

> Any disputes the parties are unable to settle shall be referred to the appropriate Automobile Transporters Joint Area Arbitration Committee, except for the following direct violations, which are nondisputable:
>
> (a) *Nonpayment of the established wage rates*, when due, provided for in this Agreement, Supplements or Riders;
>
> . . .
>
> (e) This paragraph does *not* apply to *disputes over the computation of wages or application of wage rates.*

> The Local Union shall give the Employer a seventy-two (72) hour written notice . . . prior to taking any strike action authorized by the Section.

Id. (emphasis added). Interpretation of these subsections is the crux of the dispute in this appeal.

On October 1, 1997, Allied purchased Ryder Automobile Carrier Group and its subsidiary corporations including Commercial Carriers, Inc. With the purchase, Allied acquired several additional shipping facilities, including one located at 600 Veritas Street in Nashville ("Veritas Facility"). Allied reports that after the purchase, it possessed several "dual" and redundant shipping terminals in many cities, including Nashville. Allied management decided it would be economically efficient to consolidate several, if not all, of the dual terminals in most cities. This decision directly affected the operations at the Harding and Veritas Facilities in Nashville. In November 1997, Allied announced its intention to merge the two Nashville facilities sometime in early 1998.

The parties agree that because the Harding and Veritas facilities were operated by two different companies prior to October 1997, there were a number of differences in the terms

and conditions of employment at the facilities. One such difference was the facilities' established pay rate for labor. Although the parties resolved many other differences concerning the consolidation of the facilities (such as seniority determinations) through dispute resolution, Allied refused to negotiate the issue of the two different established pay rates. Instead, according to Allied, prior arbitration decisions in the industry established that when two terminals were merged, the conditions that applied at the terminal into which the operations were physically merged were the conditions that continued and applied at the surviving terminal. After Allied decided to merge the Harding and Veritas operations into the physical Harding Facility, it therefore determined that the Harding established pay rate would govern all workers at the "new" merged facility.

Allied acknowledges that the wage rates at the Harding and former Veritas Facilities were "dissimilar," but contends that the net effect of the Harding wage rate was still higher than the Veritas Facility. Nevertheless, the union was displeased by Allied's decision to discontinue paying the established wage rate from the Veritas Facility. Pursuant to the National Agreement, the union issued a 72-hour strike notice on May 29, 1998. On June 4, 1998, picketers appeared at the Harding Facility with signs reading (among other things) "Failure of Allied Systems to Pay Established Wage

Rates."

Later that day, Allied filed a complaint in the district court under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and a motion for a temporary restraining order enjoining the Union from striking at the Harding Facility. Following a hearing that afternoon, the district court granted the motion for a TRO and issued an order to show cause why a preliminary injunction should not be issued against the union for violating the no-strike clause of the National Agreement.

On June 11, 1998, the district court held a hearing on the motion for the preliminary injunction under § 301. In a ruling issued from the bench, the district court denied Allied's request for a preliminary injunction.

This timely appeal followed.

II.

This court will review a district court's grant or denial of a preliminary injunction for an abuse of discretion. *Schenck v. City of Hudson*, 114 F.3d 590, 593 (6th Cir. 1997). An abuse of discretion exists when the district court "applies the incorrect legal standard, misapplies the correct legal

standard, or relies upon clearly erroneous findings of fact." *Id.* This court will also review the district court's findings of fact for clear error, and its conclusions of law *de novo*. *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 653 (6th Cir. 1996). Finally, this court will conduct a *de novo* review of the district court's interpretation of a collective bargaining agreement. *Salary Policy Employee Panel v. Tennessee Valley Auth.*, 149 F.3d 485, 489 (6th Cir. 1998).

III.

A.

A district court has the authority under § 301 to compel specific performance of a collective bargaining agreement requiring the arbitration of grievances in a labor dispute. *See* 29 U.S.C. § 185(a). However, § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, significantly curtails a district court's ability to issue an injunction against labor strikes and work stoppages. The pertinent portion of the Act reads:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute

> to prohibit any person or persons participating or interested in such dispute . . . from . . .
>
> > (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence[.]

29 U.S.C. § 104. This court has recognized that the "anti-injunction provisions of the Norris-LaGuardia Act were intended to protect workers in the exercise of organized economic power." *Crowe & Assocs., Inc. v. Bricklayers & Masons Union Local No. 2 (In re Crowe & Assocs., Inc.)*, 713 F.2d 211, 216 (6th Cir. 1983) (per curiam). As the Supreme Court stated: "Congress acted to prevent injunctions of the federal courts from upsetting the natural interplay of the competing economic forces of labor and capital." *Brotherhood of R.R. Trainmen v. Chicago River*, 353 U.S. 30, 39 (1957).

Occasionally, § 301 of the LMRA and § 4 of the Norris-LaGuardia Act come to direct loggerheads when a district court is asked to enjoin a labor strike which the employer contends violates a collective bargaining agreement.

The Supreme Court first addressed the inherent conflict between the two statutes in *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970). In *Boys Markets*, the Court reasoned that "a no-strike obligation, express or implied, is the *quid pro quo* for an undertaking by the employer to submit grievance disputes to the process of arbitration." *Id.* at 248. The Court further opined that "[a]ny incentive for employers to enter into such an arrangement is necessarily dissipated if the principal and most expeditious method by which the no-strike obligation can be enforced is eliminated." *Id.* Accordingly, the Court reconciled § 301 of the LMRA and the anti-injunction provisions of the Norris-LaGuardia Act by creating a "narrow" exception to the Norris-LaGuardia Act: federal courts are permitted to enjoin strikes only when such action would enforce terms of a collective bargaining agreement specifically negotiated by the parties. *See id.* at 253-54.

In this appeal, Allied maintains that the decision to utilize the wage rates from the former Harding Facility to the new "merged" facility was a "dispute[] over the computation of wages [and/or] application of wage rates" within the meaning of Article 7, Section 1(e) of the no-strike clause in the National Agreement. Thus, in Allied's view, the union was precluded from striking under the terms of the National Agreement, and the district court should have issued the

injunction. In the alternative, Allied contends that all disputes over interpretation of the National Agreement were themselves to be arbitrated pursuant to Article 7, Section 7(a). The union responds, and the district court agreed, that the strike fell within the exception of Article 7, Section 1(a) of the no-strike provisions, as the strike was "over what can be characterized as the abandonment or unilateral repudiation and nonpayment of previously negotiated established wage rates for the Veritas facility." J.A. at 117 (Bench Ruling).

When seeking a *Boys Markets* injunction, the employer has the burden of showing that it is entitled to such an injunction. *In re Crowe & Assocs., Inc.*, 713 F.2d at 215; *Plain Dealer Publ'g Co. v. Cleveland Typographical. Union No. 53*, 520 F.2d 1220, 1227-28 (6th Cir. 1975); *Parade Publications, Inc. v. Philadelphia Mailers Union No. 14*, 459 F.2d 369, 373 (3d Cir. 1972). This court has articulated the analysis to be followed when determining whether a party is entitled to an injunction against a labor strike or work stoppage within the meaning of *Boys Markets*:

> First, the controversy must involve or grow out of a labor dispute within the meaning of Section 4 of the [Norris-LaGuardia] Act. Second, a full evidentiary hearing must be held. Third, the court must find that the

> dispute underlying the controversy is subject to binding arbitration under the terms of the collective bargaining agreement. Finally, the traditional equitable bases for injunctive relief must be met. A court has jurisdiction to issue an injunction only where all four of the above steps have been completed and satisfied.

International Union United Auto. Workers v. Lester Eng'g Co., 718 F.2d 818, 822 (6th Cir. 1983). The parties agree that only the third factor is of relevance in this appeal.

Although the parties creatively articulate several issues for us to consider, the essence of their legal dispute can be distilled to one simple question: was the district court correct in denying Allied's request for an injunction? We agree that the district court did not abuse its discretion below.

B.

Allied first argues that the district court should have issued the injunction because of a strong congressional policy favoring arbitration of labor disputes, and because Article 7, Section 7(a) of the National Agreement mandates that disputes over conflicting provisions are themselves to be resolved through arbitration. Since *Boys Markets*, the

Supreme Court has emphasized that the anti-injunction provisions of the Norris-LaGuardia Act are to be given a "broad interpretation" and that the *Boys Markets* exception is to be recognized "only in limited situations where necessary to accommodate the Act to specific federal legislation or paramount congressional policy." *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n,* 457 U.S. 702, 708 (1982). Allied is correct that congressional policy has long favored the arbitration of labor disputes. *See generally Textile Workers Union v. Lincoln Mills,* 353 U.S. 448 (1957); *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.,* 363 U.S. 593 (1960); *United Steelworkers v. American Mfg. Co.,* 363 U.S. 564 (1960). However, it must be remembered that a congressional policy favoring arbitration "does not reflect a congressional policy favoring the issuance of anti-strike injunctions pending arbitration." *Waller Bros. Stone Co. v. United Steelworkers,* 620 F.2d 132, 135 (6th Cir. 1980). As a corollary point, it is obvious that no congressional policy is furthered by forcing a party to a collective bargaining agreement to arbitrate issues for which it explicitly retained the right to utilize economic weapons in labor negotiations.

Similarly, Allied's argument that it is entitled to an injunction on the basis that Article 7, Section 7(a) calls for

arbitration of all disputes over interpretation of the National Agreement's provisions is also unavailing. The Supreme Court has made clear that the mere arbitrability of the issue of whether a strike violates a no-strike provision does not entitle the employer to a *Boys Markets* injunction. *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 409-10 (1976). We expounded the point in *Waller Brothers*: "the fact that a strike may arguably violate the provisions of the collective bargaining agreement, and may thus present an arbitrable issue does not justify the issuance of a *Boys Markets* injunction." *Waller Bros.*, 620 F.2d at 136; *see also Complete Auto Transit, Inc. v. Reis*, 614 F.2d 1110, 1113 (6th Cir. 1980), *aff'd* 451 U.S. 401 (1981).

Most collective bargaining agreements contain arbitration clauses. *Truck Drivers Local 705 v. Schneider Tank Lines Inc.*, 958 F.2d 171, 174 (7th Cir. 1992). That a collective bargaining agreement calls for arbitration over disputes regarding construction of the agreement is hardly unusual. *See, e.g., National Wrecking Co. v. Kumerow*, 606 F. Supp. 374, 375 (N.D. Ill. 1985) (denying injunction even though agreement provided "for binding arbitration of disputes and grievances with respect to the application and construction of the agreement"); *National Mine Serv. Co. v. United Steelworkers.*, 385 F. Supp. 856, 859 (N.D. W.Va. 1974) (denying injunction despite broad scope of grievance

procedure). In the case *sub judice,* the underlying dispute is whether Allied's decision to use the Harding Facility wage rates constituted the non-payment of the Veritas rates, or was an exercise in the application of wage rates. But as far as a *Boys Markets* injunction is concerned, only resolution of *this* dispute is relevant to our inquiry.

It can be argued that whether Article 7, Section 7(a) comes into effect is a natural and logical extension of the parties' underlying dispute in this case. However, we believe it unwise to tread beyond the core underlying dispute between the parties, as such determinations "would embroil the courts in endless circular reasoning trying to decide where arbitrability starts and where it stops." Comment, *Labor Injunctions Pending Arbitration: A Proposal to Amend Norris-LaGuardia,* 63 TUL. L. REV. 1681, 1694 n.85 (1989). Additionally, the Supreme Court's decision in *Jacksonville Bulk Terminals* supports the view that a federal court must constrain itself solely to the arbitrability of the underlying dispute in determining whether to issue a *Boys Markets* injunction. In that case, the workers refused to handle any cargo bound to or coming from the former Soviet Union in protest of the 1979 invasion of Afghanistan. The Court held that the underlying dispute between the parties was a political dispute "plainly not arbitrable under the collective bargaining agreement." *Jacksonville Bulk Terminals,* 457 U.S. at 721.

The Court reached this conclusion despite the fact that the collective bargaining agreement in that case contained "both a broad no-strike clause and a provision requiring the resolution of *all* disputes through a grievance procedure, ending in arbitration." *Id.* at 706 (emphasis added). If the collective bargaining agreement in *Jacksonville Bulk Terminals* was insufficient to entitle the employer to a *Boys Markets* injunction, then the same must be said for Article 7, Section 7(a) in this case.

C.

Allied's remaining argument is that it was entitled to a *Boys Markets* injunction because, in its view, the underlying dispute was over an arbitrable issue–namely, the computation and/or application of wage rates. We have previously held that *Boys Markets* injunctions are to be granted only when "it clearly appears to the trial judge that the dispute which underlies the strike is subject to a no-strike obligation." *Waller Bros.*, 620 F.2d at 137; *accord Matson Plastering Co., Inc. v. Operative Plasterers & Cement Mixers Int'l Ass'n, Etc.*, 633 F.2d 1307, 1308 (9th Cir. 1980) (*Boys Market* injunction proper only when a "clear" and "undisputed" contractual duty to arbitrate the underlying dispute exists).

We are not convinced that Allied has met its burden

of showing that the dispute was clearly and undisputably over an arbitrable issue. The parties agree that several necessary changes were effectuated as a result of the merging of the two Nashville facilities including dispatch procedures and payroll policies. Likewise, it is also agreed that the parties submitted grievances to resolve seniority disputes to an arbitration panel. However, there is no evidence that the union engaged in a work stoppage for reasons other than the wage rate controversy. Such should not be surprising, because the no-strike exceptions of Article 7, Section 1 only reserved the right to strike in limited situations, including the nonpayment of established wage rates.

At the very least, reasonable minds may differ as to whether Allied's decision to use the Harding Facility wage rate constituted (as the union asserts) the nonpayment of the Veritas Facility established wage rate, or (as Allied asserts) the application of wage rates. Both the union's and Allied's interpretation of the National Agreement have merit. However, so long as the right to strike is interrelated with an ambiguity in a collective bargaining agreement, a federal court is without jurisdiction to issue a *Boys Market* injunction. As the Second Circuit has succinctly pronounced:

> Where the collective agreement, as here, excepts from the requirement of arbitration

> certain types of contract violations and provides that the union retains the right to strike with respect to such violations, no injunction can issue against a strike where the union presents a colorable claim that such violations have occurred.

Standard Food Prods. Corp. v. Brandenburg, 436 F.2d 964, 966 (2d Cir. 1970). We find this reasoning particularly fitting in the case *sub judice,* because we believe that the union has made a colorable claim that the strike was not over an arbitrable issue.

Our decision in *Waller Brothers* presented a similar scenario involving differing meritorious interpretations of a collective bargaining agreement. In that case, the bargaining agreement contained a dispute resolution procedure for all disputes, but provided that wage rates were not subject to arbitration, and that the union reserved the right to strike in the event of a disagreement on wages. *Waller Bros.,* 620 F.2d at 134. In addition, the bargaining agreement also provided a schedule of wage rates for different job classifications. *Id.* The strike began when the employer purchased new packing equipment and the union believed that it was entitled to negotiate a new wage rate for the operator of the packing equipment. *Id.* at 133. The employer argued that the new

packing machine operating-position was essentially a revised version of an old job that had been listed on the wage rate schedule. *Id.*

We vacated the district court's issuance of a *Boys Market* injunction because the employer had not clearly demonstrated that its interpretation of the contract was correct. While acknowledging that the employer's position had "some force," we noted that the parties' "underlying dispute [was] inescapably over wage rates." *Id.* at 137. Because the union had reserved the right to strike over wage rates disputes, and because the resolution of the question of whether the strike was in fact in violation of the no-strike clause could not be "fully addressed in an action seeking a preliminary injunction," we concluded that the district court's issuance of the injunction was improper.[4] *Id.* at 136-37.

The Ninth Circuit's decision in *Matson* is also illustrative of the high burden an employer faces when

---

[4] Allied argues that *Waller Brothers* is distinguishable from the present case because the National Agreement contained a more comprehensive grievance resolution procedure calling for arbitration of disagreements over the construction of the National Agreement's provisions per Article 7, Section 7(a). For the reasons explained in section III (B) of this opinion, Allied's continued reliance on Article 7, Section 7(a) is misguided.

seeking a *Boys Market* injunction. In that case, the union engaged in a work stoppage over the employer's failure to pay an assessment for late payment of contributions to the union's trust fund. *Matson*, 633 F.2d at 1309. It was undisputed that the collective bargaining agreement permitted a strike for failure to make the contribution payments themselves. *Id.* The employer presented various arguments why the agreement did not allow a strike--presumably because the union only retained the right to strike for failure to pay the contributions, not failure to pay the assessments. *Id.* The Ninth Circuit vacated the district court's injunction for essentially the same reason as *Waller Brothers*–absent a showing that the union's actions clearly offended its no-strike obligations under the collective bargaining agreement, a "district court has no jurisdiction to enjoin strike activity[.]" *Id.*

As was the situation in *Waller Brothers* and *Matson*, the interpretation of the National Agreement with regards to the propriety of the union's strike in this case is "far from clear." Contrary to Allied's protestations, however, our affirming the district court's judgment is hardly a resolution of the merits of the underlying dispute. We do not hold that the union indeed had the right to strike over Allied's decision to forgo the wage rates used at the former Veritas Facility in favor of the Harding Facility rates. We hold only that Allied

has not demonstrated that its interpretation of the National Agreement is so clearly and undisputably correct to warrant the issuance of a *Boys Market* injunction. Accordingly, the district court did not abuse its discretion in denying Allied's request for a preliminary injunction. If Allied wishes to seek recourse against the union, it must do so in an unfair labor practice action on the merits.

IV.

For the reasons stated herein, the district court's denial of Allied's request for injunctive relief is **AFFIRMED**.

Appendix B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ALLIED SYSTEMS, LTD., a Georgia Limited Partnership	)	
v.	)	NO. 3:98-0499
	)	JUDGE CAMPBELL
TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, LOCAL UNION NO. 327, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America, DAVE HODGIN, and JIMMY NEAL, its officers, agents and employees and its members who are employed by Plaintiff ALLIED SYSTEMS, LTD. At its Nashville Tennessee facilities	)	**FILED June 11, 1998**

ORDER

For the reasons stated from the bench, the Motion for Preliminary Injunction (Docket No. 3) is DENIED.

It is so ORDERED.

/s/

TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

This document was entered on the docket in compliance with Rule 58 and/or Rule 79 (a), FRCP, on 6-12-98. By: TS

Appendix C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ALLIED SYSTEMS, LIMITED Plaintiff,	•	
	•	Civil Case # 3-98-0499
vs.	•	June 11, 1998
	•	9:00 a.m.
TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, LOCAL 327, ET AL, Defendants.	•	**FILED** **June 12, 1998**

TRANSCRIPT OF RULING
BEFORE THE HONORABLE TODD J. CAMPBELL

APPEARANCES:

For the Defendants:

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Official Court Reporter:

John W. Tummel, RPR
801 Broadway, Rm. A-839
Nashville, TN 37203

THE COURT: Thank you for your patience. I have formed an opinion and I am going to announce my decision and reasoning and an order will be entered based upon what I am about to describe.

We have pending before the Court the plaintiff's motion for preliminary injunction and the following reasons I am denying the motion.

Some of the basic facts in this case are that the plaintiff, Allied, acquired Ryder slash CCI in October of 1997. CCI had a facility in Nashville at Veritas Street, Allied had one at Harding Place.

Allied has now merged these two facilities. The degree of the meger is contested but at least portions of it have been merged.

The defendant unions want to strike and the plaintiff Allied wants a preliminary injunction for the reasons I will get in to more fully in a moment.

We start with the basic idea that the Norris-LaGuardia Act prohibits injunctions by federal courts against strikes in certain labor disputes. That statute is found at 29, USC, Section 104.

There is a narrow exception to the Norris-LaGuardia Act. One of those exceptions is Boys Market versus Retail Clerks found at 90, Supreme Court, 1583. This is an exception to the Norris-LaGuardia Act. It generally says where the parties agree to a mandatory binding arbitration, strikes can be enjoined if the usual TRO requirements are otherwise satisfied.

At Boys Market an injunction generally can only issue if the dispute over which the union is striking is subject to arbitration.

Here we have the agreement is embodied in three different documents. One is the National Master Agreement which is Exhibit A to the complaint and

Exhibit 1 to this hearing; the Central Southern area supplement is Exhibit 1 to this hearing and the rider for Local 327 which is Exhibit 21.

The parties agree that what I will call the agreement, which is all three of the requirements, requires mandatory binding arbitration subject to limited exceptions. That is established by Article 7, Section 13 and Article 7, Section 8, Subsection E. There is a no strike clause at Article 7, Section 1, and these are citations to the master agreement.

There is an exception to the arbitration and no strike provisions. Those are set out in Article 7, Section 1, Subsections A through D and then there is an exception to the exception which is Subsection E. Those bear some fleshing out.

Item A is an exception to the no strike clause that says nonpayment of the established wage rates when due provide for this agreement, supplements or riders.

And item E which I described as the exception to the exception says, this paragraph does not apply to disputes over the computation of wages or application of rates.

And the scope of those items are hotly contested.

In this case the plaintiff's theory is roughly as follows: That the dispute between the parties is about what is the established rate. There is the Allied Harding Place rate and the CCI Veritas Street rate. The plaintiff contends that the dispute is within Subsection E and that it is a dispute about the application of rates and also takes the position that it is a dispute about contract interpretation, particularly Article 1, Section 3 that deals with the transfer of company title or interest which plaintiff takes the position must be arbitrated under Article 7, Section 13.

Defendants' theory is that the exception in Subsection A, the nonpayment of the established wage rates, applies in this instance.

The Court issued a TRO on June 4th. The Court has now heard additional evidence today and the parties' expression of their argument is more fully developed in this Court's understanding of their expression and it is more fully developed.

Examples of some of the items that have been more clearly articulated or at least better understood is the parties agree there were two established rates in effect as that term is used in Article 7, Section 1 at the time that the two facilities were merged. There is agreement, in other words, that there were two establish rates at the time of the merger.

There also has been testimony about the strikers are displaying on their picket signs. They say they are striking over the failure to pay established rates.

Another expression what the strike is over was set out in the 72 hour strike notice, and the Court finds that to be ambiguous. The 72 hour notice refers both to Article 1, Section 3 of the transfer title provision as well as Article 7, Section 1 A, the failure to pay established rate provision.

The Court finds that based upon the evidence heard today and all the documents submitted, that including the witnesses for the union and arguments of their lawyers, that it is now clear what the strike is over. The strike is over what can be characterized as the abandonment or unilateral repudiation and nonpayment of previously negotiated established wage rates for the Veritas facility.

The Court finds the strike is over the total repudiation and nonpayment of the established Veritas rates.

The strike is not over their application. As far as the plaintiff is concerned those rates no longer exist. The strike is over the fact that they have been abolished.

Because the strike is not over whether Allied simply did not apply the right rates within the negotiated established rates, Subsection E doesn't apply.

The Court finds that Subsection A of Article 7, Section 1 does apply and the union is entitled to strike over the non-establishment – excuse me – the nonpayment of established rates under Article 7, Section 1 A. Because it is within the scope of that grievance – the dispute is within the scope of that provision.

At any event, under the Waller Brothers case versus United Steelworkers, 690, Fed 2nd, 132, 1990, the issue presented is greatly in doubt and the Court finds it would be an abuse of discretion to issue an injunction under those circumstances.

So, accordingly, the TRO is vacated and an order will be entered that says words to this effect, as stated from the bench the motion for preliminary injunction is denied.

Anything further I need to entertain from the parties?

MR. HAMILTON: No, Your Honor.

MR. PASSINO: No, Your Honor.

THE COURT: All right. This conclude the hearing then.

Thank you.

REPORTER'S CERTIFICATE

I, John W. Tummel, Official Court Reporter for the United States District Court, Middle District of Tennessee, with office at Nashville, hereby certify that I recorded on the Stenograph Shorthand Machine the proceedings held in open court on June 11, 1998, in the matter of: ALLIED SYSTEMS, LTD. VS. TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE, LOCAL UNION 327, ET AL; Nashville Civil Case No. 3-98-0499; and that the proceedings in connection with this hearing were reduced to typewriting under my supervision; and that the foregoing is a true and correct transcript of the same.

This the 12th day of June, 1998.

/s John W. Tummel/
Official Court Reporter

*** CERTIFIED TRANSCRIPT ONLY IF SIGNED IN BLUE INK. ***

Appendix D

28 UNITED STATES CODE SECTION 1254

§ 1254 Court of Appeals; certiorari; certified questions

Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Appendix E

29 UNITED STATES CODE SECTION 101

NORRIS-LAGUARDIA ACT

§ 101 Issuance of restraining orders and injunctions; limitation; public policy

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

Appendix F

29 UNITED STATES CODE SECTION 102

NORRIS-LAGUARDIA ACT

§ 102 Public policy in labor matters declared

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free

from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

Appendix G

29 UNITED STATES CODE SECTION 103

NORRIS-LAGUARDIA ACT

§ 103 Nonenforceability of undertakings in conflict with public policy; "yellow dog" contracts

Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 102 of this title, is declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United Sates and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

Appendix H

29 UNITED STATES CODE SECTION 104

NORRIS-LAGUARDIA ACT

§ 104 Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Appendix I

29 UNITED STATES CODE SECTION 105

NORRIS-LAGUARDIA ACT

§ 105 Doing in concert of certain acts as constituting unlawful combination or conspiracy subjecting person to injunctive remedies

No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 104 of this title.

Appendix J

29 UNITED STATES CODE SECTION 106

NORRIS-LAGUARDIA ACT

§ 106 Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members and agents

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Appendix K

29 UNITED STATES CODE SECTION 107

NORRIS-LAGUARDIA ACT

§ 107 Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect –

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same

after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial

and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting or any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a

claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Appendix L

29 UNITED STATES CODE SECTION 108

NORRIS-LAGUARDIA ACT

§ 108 Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

Appendix M

29 UNITED STATES CODE SECTION 109

NORRIS-LAGUARDIA ACT

§ 109 Granting of restraining order or injunction as dependent or previous findings of fact; limitation on prohibition including in restraining order and injunctions

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.

Appendix N

29 UNITED STATES CODE SECTION 110

NORRIS-LAGUARDIA ACT

§ 110 Review by court of appeals of issuance or denial of temporary injunctions record

Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside expeditiously.

Appendix O

29 UNITED STATES CODE SECTION 113

NORRIS-LAGUARDIA ACT

§ 113 Definitions of terms and words used in chapter

When used in this chapter, and for the purposes of this chapter –

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interest therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

Appendix P

29 UNITED STATES CODE SECTION 185

§ 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a

labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process

The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency

For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Supreme Court, U.S.
FILED
SEP 29 1999
OFFICE OF THE CLERK

No. 99-369

IN THE
Supreme Court of the United States

ALLIED SYSTEMS, LTD.,
a Georgia Limited Partnership,
Petitioner,
v.

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE; LOCAL UNION 327 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; DAVE HODGIN and JIMMY NEAL, its officers, agents and employees and it's members who are employed by Plaintiff Allied Systems, Ltd. at its Nashville, Tennessee facilities,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Where a collective bargaining agreement, enforceable under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, excepts from the requirement of arbitration certain types of contract breaches by an Employer and provides that the Labor Organization retains the right to strike with respect to such contract breach, do the provisions of Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, which withdraw jurisdiction of the courts of the United States for the issuance of any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute, bar issuance of injunctive relief by the United States District Courts upon application by the Employer under this Court's opinion in *Boys Markets v. Retail Clerks Union*, 398 U.S. 235 (1970).

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to this proceeding include the Petitioner, Allied System, Ltd., a Georgia limited partnership, which is a wholly-owned subsidiary of Allied Automotive Group, Inc. Allied Automotive Group, Inc. is a wholly-owned subsidiary of Allied Holdings, Inc., a publicly held corporation. The Respondents are Teamsters National Automobile Transporters Industry Negotiating Committee, a labor organization affiliated with the International Brotherhood of Teamsters, AFL-CIO and Teamsters Local Union No. 327, a labor organization headquartered in Nashville, Tennessee, also affiliated with the International Brotherhood of Teamsters, AFL-CIO. The individuals named in the caption, Dave Hodgin and Jimmy [illegible], are employees and business agents of Teamsters Local Union No. 327. There are no publicly held companies related to or controlling Respondents.

IN THE

Supreme Court of the United States

No. 99-369

ALLIED SYSTEMS, LTD.,
a Georgia Limited Partnership,
Petitioner,

v.

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE; LOCAL UNION 327 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; DAVE HODGIN and JIMMY NEAL, its officers, agents and employees and it's members who are employed by Plaintiff Allied Systems, Ltd. at its Nashville, Tennessee facilities,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

Respondents Teamsters National Automobile Transporters Industry Negotiating Committee and Teamsters Local Union No. 327 respectfully pray that Petitioner Allied System Ltd.'s August 30, 1999 Petition for Writ of Certiorari seeking review of a June 9, 1999 final judgment and order of the United States Court of Appeals for the Sixth Circuit be denied.

OPINION BELOW

The decision sought to be reviewed has been reported as *Allied Systems Ltd. v. Local 327 Teamsters*, 179 F.3d 982 (6th Cir. 1999). The decision and order of the United States District Court for the Middle District of Tennessee, the Honorable Todd J. Campbell, United States District Judge, is accurately reported in Appendix B and Appendix C of Petitioner's Petition.

JURISDICTION

Respondents agree with Petitioner that all jurisdictional requisites have been complied with for review of this matter pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Respondents rely upon the statement of the facts and the case set forth in the Court of Appeals opinion *Allied System Ltd. v. Local 327 Teamsters*, 179 F.3d at 984-985. Respondents respectfully state, pursuant to Rule 15.2 of the Rules of the Supreme Court of the United States, that Petitioner Allied Systems Ltd. failed to rebut testimony of Respodents' witnesses before the United States District Court below regarding disputes over the computation of wages or application of rates. During the preliminary injunction hearing in this matter on June 11, 1998 Union negotiator Paul R. Houck testified without contradiction by Petitioner that the language of the exception to the exception to the No Strike clause at issue in this case, Article 7, Section 1(e), deals simply with day-to-day differences of opinion that arise out of disputes dealing with individual employee rates of pay. Transcript of 6/11/98 Preliminary Injunction Hearing, pp. 151-52. *See*, Petition Appendix C at Apx. 33-34.

Because Petitioner failed in its showing before the District Court below, this Petition should not be granted.

REASONS FOR DENYING THE WRIT

THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S DENIAL OF A PRELIMINARY INJUNCTION BASED UPON THE DISTRICT COURT'S APPLICATION OF THE NORRIS-LAGUARDIA ACT TO THE FACTS FOUND AT HEARING ON THIS LABOR DISPUTE

Petitioner Allied Systems Ltd. attempts to have this Court review a labor dispute claiming that the asserted ambiguity in the no-strike clause of the collective bargaining agreement at issue gives rise to a "presumption of arbitrability" most recently articulated in this Court's opinion in *AT&T Technologies v. Communications Workers*, 475 U.S. 643, 650-51 (1986). The Court of Appeals correctly rejected Petitioner's arguments by noting that ". . . no congressional policy is furthered by forcing a party to a collective bargaining agreement to arbitrate issues for which it explicitly retained the right to utilize economic weapons in labor negotiations." *Allied Systems Ltd. v. 327 Teamsters*, 179 F.3d at 987.

Further, the Court of Appeals correctly found that Petitioner's arguments amount to a petition for injunctive relief to determine the issue of whether a strike violates the no strike clause, which is prohibited under the Norris-LaGuardia Act. *Allied Systems Ltd. v. Local 327 Teamsters*, 179 F.3d at 988. *See, Buffalo Forge Co.* v. *United Steelworkers of America*, 428 U.S. 397, 409-10 (1976). *See also, Complete Auto Transit, Inc. v. Reis*, 614 F.2d 1110, 1113 (6th Cir. 1980), *aff'd* 451 U.S. 401 (1981). Such a request was properly denied.

Finally, the Petitioner has not shown any conflict between the opinions of Circuit Courts of Appeal where the two allegedly conflicting opinions, *Avco Corporation v. International Union, United Auto Workers*, 459 F.2d

968 (3d Cir. 1972), and *Southwestern Bell Telephone Co. v. Communication Workers of Am.*, 454 F.2d 1353 (5th Cir. 1972) predate this Court's analysis in *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Association*, 457 U.S. 702 (1982), *Buffalo Forge Co. v. United Steelworkers of Am.*, 428 U.S. 397 (1976) and *Gateway Coal Company v. United Mine Workers*, 414 U.S. 368 (1974) which set forth guidance for the district courts in *Boys Markets* injunction proceedings.

CONCLUSION

The petition of Allied Systems Ltd. for writ of certiorari to the Court of Appeals for the Sixth Circuit should be denied.

Respectfully submitted,

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